

# ADJUSTING TODAY

Adjusters International Disaster Recovery Consulting

## Debris Removal and Pollution Damage How These Additional Costs Impact the Property Claim

### EDITOR'S NOTE

*Today, maintaining an insurance program that adequately protects a business means being aware of an unprecedented number and variety of complex exposures.*

*Since its inception, Adjusting Today has offered important information on such exposures—particularly as they relate to the property claims adjustment process—to leading agents, brokers and business professionals.*

*That effort continues in this latest edition as we focus on the timely issue of how debris removal and pollution damage costs affect property claims. Our feature article—prepared initially by Paul O. Dudey and updated by Donald S. Malecki—takes a close look at what is and what is not covered under basic policy provisions, including some steps that can be taken to arrange more adequate protection.*

*Complementing this article is a piece by veteran public adjuster Patrick W. Bickford, SPPA, who provides examples of actual debris removal and pollution losses he has witnessed during his years in the field. Mr. Bickford is a member of the Board of Directors of Adjusters International and operates AI's Colorado office.*

—Sheila E. Salvatore, Editor



By Paul O. Dudey, CPCU; Donald S. Malecki, CPCU

A tornado tears through a small Midwestern community, ripping the roof off the main plant of a large paint manufacturer. Parts, materials and equipment are blown everywhere, and the plant is shut down for an indefinite period. At first, the insured is relieved to think that their standard property and business income insurance policies will cover all of the losses and have them back up and running soon.

Then, it's discovered that the winds have strewn debris across the company's own nine-acre complex, as well as onto the property of neighboring firms. And that debris from those operations has blown onto the paint manufacturer's premises. Further complicating matters is the fact that dyes and other chemicals used in making the paints have leaked outside the plant, contaminating the ground



and water supply. Suddenly, the magnitude and nature of the loss are much different than originally believed.

The insured, their broker and the adjuster are now facing a much more difficult task in determining what's covered, what's not—and what better protection might have been available when the coverage was arranged.

When calculating the many costs involved in repairing or restoring property following its destruction or damage, keep in mind that the costs of removal of the debris from the damaged property and the cleanup of possible pollution resulting from the property damage are in addition to—rather than a part of—the value of the damaged property.

As such, their possible impact on the total amount of the loss, and the coverage limitations on these

costs in most standard property insurance policies are frequently overlooked in arranging the coverage initially. Often the result in such cases is disappointment with the recovery made under the policy after a loss occurs.

### ***History of Debris Removal Coverage***

In examining the coverage available for these costs, a brief look at the history and development of debris removal coverage may be helpful. Under the 1943 New York Standard Fire Policy and its predecessors, no mention was made of debris removal costs as either covered or excluded. This gave rise to controversy, with some insurers routinely including these costs as a part of the claim settlement and others rejecting or resisting payment, contending that this cost was a consequential, rather than a direct, result of the loss, and as such, was not covered.

To clarify the intent of the coverage as including these costs, a debris removal clause was added to the forms attached to the Standard Fire Policy. It simply stated that the coverage extended to include the cost of removal of the debris resulting from the property loss. The debris removal coverage was within, and did not increase, the limit of liability. Debris removal costs were not considered in determining compliance with the coinsurance clause of the policy; however, if a coinsurance penalty was found to apply, reducing the recovery of the property loss, customary adjustment practice was to apply the same limitation to the payment for debris removal.

The coverage was thus limited by the amount of insurance carried, so that in a substantial loss, the property loss plus the cost of debris removal might well exceed the amount of insurance carried, unless debris removal costs had





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been anticipated and enough insurance was carried to provide for the full loss of property plus the cost of debris removal. One of the compelling arguments for blanket insurance over two or more locations was that coverage would be available at each location for the full property value plus debris removal costs whenever the amount of insurance over all locations was high enough to cover

the loss (including debris removal) at any one location, and to meet the coinsurance requirement.

In recent years, as the cost of cleaning up and disposing of debris increased substantially and environmental laws imposed progressively stricter and more costly rules on disposal—particularly of hazardous materials—insurers have been forced to build restrictions into the basic policy forms regarding both debris removal and pollutants. Unfortunately, these restrictions as included in most policy forms are complex and difficult to interpret, giving rise to frequent questions and misunderstandings.

A typical case leading to the more restrictive coverage was a 1977 Georgia court of appeals case, *Lexington Insurance Co. v. Ryder Systems, Inc.*, 234 S.E.2d 839, which found that the cost of removing and replacing oil-soaked ground around an oil storage tank that had developed a below-ground leak was covered as a cost of debris removal. The policy involved

was an “all risks” policy that did not exclude accidental leakage. The oil was “covered property” and its escape and contamination constituted “debris of covered property.”

The discussion that follows is based on Insurance Services Office (ISO) commercial buildings and personal property form CP 00 10 06 07. Most commercial property forms have somewhat similar debris removal and pollution provisions. Homeowners policies also have a debris removal clause, with some significant differences from the commercial form, but these are outside the scope of this discussion.

### **Current Debris Removal Limitations**

For commercial property insurance under form CP 00 10 06 07, debris removal coverage is offered as an “additional coverage” rather than a part of the basic property coverage. In this section of the form the coverage is limited to 25 percent of the insurer’s liability for the direct property loss by a covered cause of loss, plus any applicable deductible (unless an additional debris removal limit is shown in the declarations).

An additional \$10,000 per occurrence of debris removal coverage is made available whenever: a) the sum of direct physical loss plus debris removal exceeds the limit of insurance, or b) the debris removal expense exceeds the 25 percent limitation in the debris removal, additional coverage.

When there is concern that the 25 percent of loss limitation plus \$10,000 or the total limit of





insurance plus \$10,000 might be inadequate to cover a property loss plus debris removal cost fully, the additional \$10,000 debris removal limit can be increased by any amount desired, for additional premium, using ISO form CP 04 15 (or its equivalent), which is entitled Debris Removal Additional Insurance.

The limit shown on the endorsement is the amount to which the coverage is increased, with the \$10,000 of basic coverage included. It can be applied in addition to the smaller of: a) 25 percent of the amount of the claim paid plus the deductible; or b) the limit of insurance when it is exceeded by the sum of the property loss and the cost of the debris removal.

To illustrate, assume a \$100,000 limit of insurance (sufficient to comply with the coinsurance requirement) with an additional debris removal limit of \$10,000.

With a property loss of \$50,000, debris removal coverage of

\$12,500 (25 percent) plus \$10,000, or \$22,500 is available, for a total possible payment for property damage and debris removal of \$72,500.

But with a \$90,000 property loss, \$22,500 (25 percent) plus \$10,000, or \$32,500 becomes \$122,500, when added to the \$90,000 property loss.

This is greater than the insurance limit plus \$10,000 (\$110,000). Payment is limited to \$110,000 for property loss plus debris removal costs.

Claims for debris removal expenses are payable only “if they are reported” to the insurer within 180 days after the date of loss. Note that the expenses must be reported, but not necessarily incurred, within that time. A contractor’s estimate given to the insurer for work not yet completed will satisfy this requirement.

However, we have seen cases where an insurer has taken exception to this, insisting that the work must have been completed

within this time for coverage to apply. So an insured, with the 180-day deadline approaching and unable to complete the debris removal within that time, is well advised—besides giving notice to the insurer—also to seek an extension rather than argue the point while the adjustment is in progress. Many insurers will grant such an extension, given a good reason for the delay. While debris removal coverage will pay for pollution cleanup and decontamination of covered buildings and personal property, it does not apply to the cost to extract “pollutants” from land or water, or remove, restore or replace polluted land or water. Pollutant cleanup and removal is a separate additional coverage, discussed later in this article.

### ***Do Individual Limits Apply?***

The following question frequently is raised: In a severe loss involving two or more items of property coverage, how does the debris removal coverage apply—separately, to each item of coverage, or collectively over all items involved in the loss?

In cases where the limit of insurance for one item of coverage is exhausted but coverage is available under a second item, adjusters will sometimes attempt to apply the debris removal limits separately to each item.

For example, assume \$100,000 of building insurance and \$50,000 of personal property insurance with no deductible. A fire totally destroys the personal property and causes \$30,000 damage to the building. Cost of debris removal is estimated to be \$26,000 for the contents (which includes toxic





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materials that require special handling) and \$4,000 for the building.

Applying the limits separately, the 25 percent limit of debris removal on the contents is \$22,500 ( $\$50,000 \times 25\%$  plus \$10,000)—\$3,500 less than the cost of debris removal. Meanwhile, the cost of debris removal for the building loss (\$4,000) is well below the available limit of \$12,500 ( $\$30,000 \times 25\%$  plus \$10,000). The insured recovers \$3,500 less than the total amount of the loss.

However, there is no basis in the wording of the debris removal additional coverage for treating

the various items of coverage separately. The language speaks only of debris of covered property at each location resulting from a covered cause of loss and, in applying the debris removal limitation, does not differentiate between debris of buildings or of personal property.

So in the example given above, the insured has an \$80,000 property loss, and \$25,000 of debris removal expense. The policy will pay debris removal expense of 25 percent of the \$80,000 loss (\$20,000) plus \$10,000, or \$30,000, or more than the entire cost of debris removal. The \$10,000 debris removal coverage above the \$150,000

combined limits of insurance will not be a factor in this loss.

But this interpretation works against the insured when property loss plus debris removal exceeds the limit of insurance for two or more items at a single location, because the \$10,000 additional limit applies only once to the entire loss at the location instead of to each item separately.

The answer is to project a worst-case scenario of the possible property loss plus debris removal expense, and set the limits of insurance accordingly—including, when needed, the purchase of additional debris removal coverage.



**“Toxic or radioactive contamination can involve severe and expensive debris cleanup and disposal problems.”**

### ***Some Special Debris Removal Problems***

The debris removal provision of most property forms is restricted to the cost of removal of “debris of covered property.” So the cost of removing debris deposited on the premises, as by a windstorm or explosion, without damage to insured property is not covered. But when such debris causes damage to covered property, common adjustment practice will pay for its removal along with any debris of covered property. An exception to this language limiting coverage to “debris of covered property” appears in dwelling flood policies, which cover removal of debris “of, on, or from the insured property.”

Other special debris removal problems that may require attention:

**(1) Molten material**—the escape of molten material (metal, glass,

plastic, etc.) from a vessel or container or its solidification within a container from the loss of heat or power can produce a sizable loss. If the cause is an insured peril, there is debris removal coverage, but the cost may well exceed the debris removal limit unless the exposure has been recognized and additional debris removal coverage purchased.

**(2) Toxic or radioactive contamination**—can involve severe and expensive debris cleanup and disposal problems. Toxic materials can be found in common use in many situations—on supermarket shelves, stored in warehouses, in many industrial applications, to suggest only a few—and when involved in a fire, explosion or other loss resulting in their spillage or dispersion—as in the smoke from a fire or in the water used to extinguish it—the cleanup cost can be astonishingly high and the time delay in making

the premises habitable again can be prolonged.

Older electric transformers may contain polychlorinated biphenyl (PCBs), and a small electrical fire involving PCBs can contaminate an entire building.

**(3) Effect on business income or extra expense recovery**—business income and extra expense forms make no direct mention of debris removal nor do they impose any stated limitation. But failure to purchase a high enough insurance limit for either of these coverages—taking into account possible delays in restoring operations because of prolonged decontamination or debris removal—can result in exhaustion of the insurance limit and a partially uninsured loss, before normal operations can be resumed.

When any such exposures are found to exist, the need for increased business income or extra expense coverage along with additional debris removal coverage should be considered. Also, the possibility of contamination of land or water by any of these materials must be considered, per the following discussion.

### ***Pollution Coverage***

The debris removal coverage of the commercial building and personal property form includes the extra cost of cleanup and disposal of hazardous materials following an insured loss (within the limits of coverage outlined above) but, as noted earlier in this article, the coverage does not apply to the cost to extract “pollutants” from land or water, or to remove, restore or replace polluted land or water.





Instead, pollutant cleanup and removal from land or water, when caused by or resulting from a cause of loss covered by the policy, is covered separately as additional coverage with its own limit. Unlike debris removal coverage, this is a separate amount of insurance, apart from the property insurance limit. It applies to the sum of all covered expenses for each 12-month period of the policy, rather than per occurrence. For

added premium, the amount can be increased according to the assessed needs.

“Pollutants” is a defined term in the policy. It means “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.” Any insured handling or exposed

to any materials that fall within any of these categories should look closely at this exposure, evaluate the possible extent of potential loss, and consider the possible need to increase the limit to a more appropriate figure for their possible exposure.

Not covered are costs to test for, monitor, or assess the existence, concentration or effects of pollutants, but testing performed

## Debris Removal and Pollution Damage Losses: They Really Happen!

Debris removal and pollution damage losses don't just happen in theory. They are real. And they can be expensive.

- During a Midwest summer flood, an industrial plant had toxic chemicals stored in tanks. The tanks were floated off their bases by the flood, spilling the toxic contents and contaminating adjacent buildings. The cost of the toxic cleanup after the flood subsided was \$200,000.
- Several gasoline stations have had losses in which leaking underground storage tanks produced substantial debris removal and toxic cleanup damages. Losses of \$250,000 or more are not uncommon in these cases.

As the next examples illustrate, the process of removing hazardous materials can sometimes be more costly than installing the materials themselves.

- A total fire loss to a bowling alley produced a \$200,000 debris removal loss in addition to the direct property damage—as a result of the building being riddled with asbestos.
- A condominium association that suffered \$250,000 worth of damage to an asbestos roof spent approximately \$1 million to dispose of the damaged asbestos—and their loss was only partially covered.
- A fire loss to a ski lodge, with a replacement cost in excess of the property insurance limit, also resulted in a substantial debris removal loss. The policy provided debris removal coverage in addition to the property coverage limit, but with the provision that the full limit of the replacement cost insurance be paid first.

We recommend to insurance buyers and their agents or brokers to examine a policy's property insurance and debris removal and pollution limits in light of the magnitude of these potential loss exposures.

– Patrick W. Bickford, SPPA



*(These are examples of direct property losses only. They do not include general liability exposures which often accompany such losses but are outside the scope of this discussion.)*

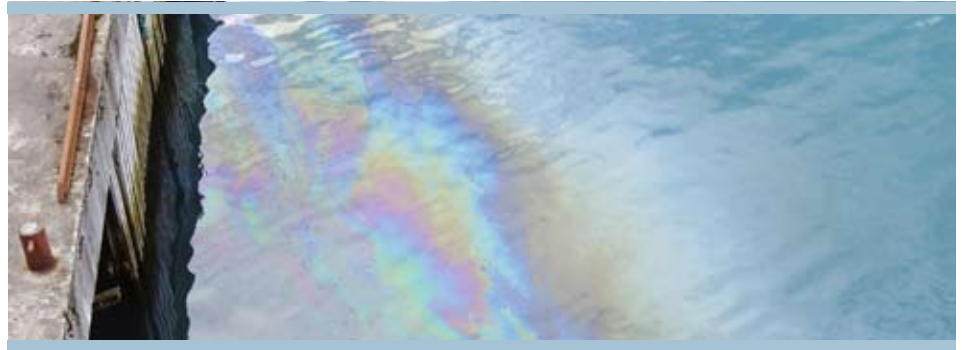


in the course of extracting pollutants is covered.

To be paid, expenses must be reported to the insurer in writing within 180 days of the date of loss. As with the debris removal expenses, they need not be incurred within this time; contractors' estimates of expenses to be incurred will suffice, but if these are not available or further delay is unavoidable, the insurer should be asked for an extension.

Typical losses that could come within this coverage might include leakage of oil or chemicals from a storage tank or a broken supply line into the ground or lake, lagoon or stream on the insured's premises.

Note that in this discussion, we are considering only the insured's own



property loss exposure. "Third party" claims—injury to others or damage to their property—as well as workers compensation claims from pollution are also major exposures for any insured involved with hazardous or toxic materials, but are outside the scope of this article. However, in the event of ground or water pollution from an outside source, the possibility of third-party recovery against the party causing the pollution, or subrogation by the insurer, having

paid for the pollution damage, should not be overlooked.

Anticipating losses that may result from debris removal or pollution damage, and understanding the coverages that can protect against them are essential considerations in structuring an adequate property insurance program. They can make the difference between a devastating disappointment and a complete recovery after a loss occurs.

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